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SUPREME COURT OF THE UNITED

OCTOBER TERM, 19[illegible]

No. 511

THE NEW NEGRO ALLIANCE, [illegible]

vs.

SANITARY GROCERY CO., INC.

ON WRIT OF CERTIORARI [illegible]

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 511

THE NEW NEGRO ALLIANCE, A CORPORATION, ET AL.,
Petitioners,

vs.

SANITARY GROCERY CO., INC., A CORPORATION.

BRIEF FOR THE PETITIONERS.

Opinion Below.

The judgment of the United States Court of Appeals for the District of Columbia was entered on July 26, 1937 (R. 23) and is reported at 64 W. L. R. The Supreme Court of the United States granted the petition for writ of certiorari on November 22, 1937 (R. 34).

Questions of Law Presented.

I.

Whether an association of Negroes organized for the purpose of securing better employment opportunities in business enterprises located in Negro residential and business districts and whose patronage is practically 100% Negroes has such "direct or indirect interest therein" in

said business enterprises as to precipitate a labor dispute by the said Negro association and the management of said business enterprises, when said Negro association endeavors to persuade the management of said business enterprises, by negotiations and peaceful picketing, to adopt a policy of employing Negro clerks in said stores located in Negro communities and supported by them, is within the purview of Sec. 13 (a) and (b) of the Norris-LaGuardia Labor Disputes Act passed by Congress, March 23, 1932 (47 Stat. 70)?

II.

Whether such dispute as described, *supra* (Questions of Law #1), between the said association and management of a retail grocery store is a labor dispute within the contemplation of Section 13, paragraph c of the said Act, which defines labor disputes as follows:

> "(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representations of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee"?

III.

Whether under Section 13 of the said Act of March 23, 1932 (47 Stat. 70), the peaceful patrolling of a single person in front of one of respondent's stores, located in a Negro business district (see R. 8, 14) for the purpose of making known to the public the respondent's refusal to negotiate with the petitioners concerning the terms or conditions of employment, or concerning the association or representations of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employ-

ment, regardless of whether or not the disputants stand in the proximate relation of employer and employee, is a labor dispute where the respondent has discontinued the services of persons represented by the petitioners and refused to give those persons or other persons of the particular group to which they belonged opportunity for employment in a newly opened establishment?

IV.

Whether or not the injunction issued by the lower court and sustained by the Appellate Court in its broad and all inclusive scope, which prohibits the petitioners from negotiating, peacefully picketing and boycotting in any capacity (R. 20), nullifies that portion of Section 13, paragraph c, of the Norris-LaGuardia Labor Disputes Act, which specifically provides for the representation of employees?

V.

Whether that part of the injunction which enjoins petitioners from boycotting respondent's business and virtually compels and in effect orders petitioners to trade at respondent's store violates the right of personal liberty safeguarded by the Fifth Amendment to the Constitution of the United States?

VI.

Whether that part of the injunction which enjoins the petitioners from inducing persons not to do business with respondent violates the right of free speech guaranteed by the First Amendment of the Constitution of the United States?

VII.

Whether as a matter of general Federal law peaceful picketing and patrolling as admitted by the respondent (see R. 8, 12A, 12B) is illegal?

Statement.

This brief is directed to four questions:

1. Whether the case at bar reveals any unlawful act of petitioners upon which injunctive relief against picketing might be predicated;

2. Whether the court below erred and infringed the petitioners' rights of free speech and personal liberty by issuing an injunction against them which is in part an affirmative injunction;

3. Whether the case at bar presents an injunction in a labor dispute as defined in Section 13 of the Norris-LaGuardia Labor Disputes Act;

4. Whether or not a "controversy involving persons or associations of persons negotiating and seeking to arrange terms or conditions of employment in an occupation in which they have a direct and indirect interest" and "against whom relief is sought" is a labor dispute, under the Act notwithstanding the fact that some of the parties to the controversy are Negroes whose patronage supports the particular retail grocery involved.

The District Court of the United States for the District of Columbia held that the instant case was outside the scope of the definitions contained in the Norris-LaGuardia Act and consequently that the petitioners were not entitled to any of the protections of that Act. The court held further that the dispute was a "racial dispute", and affirmatively enjoined the petitioners from peacefully picketing upon considerations totally apart from, and in entire disregard of, the provisions of the Norris-LaGuardia Act. The holding was affirmed by the United States Court of Appeals for the District of Columbia.

The Case at Bar.

The respondent, the Sanitary Grocery Co., is a corporation operating a number of retail grocery stores in the Dis-

trict of Columbia. The petitioner, New Negro Alliance, is a membership corporation organized for the general betterment and mutual advancement of its members. William H. Hastie and Harry A. Honesty (hereinafter designated as "petitioners' officers") were, when the case was filed, Administrator and Deputy Administrator of the New Negro Alliance. The present controversy arose out of a request made by the petitioners upon the respondent through the petitioners' officers on behalf of persons seeking employment that the respondent adopt a policy of employing Negro clerks in certain of its retail grocery stores. The refusal of the respondent to grant or even acknowledge such requests and the discontinuance of the employment of Negro clerks in certain stores of the respondent are the matters in controversy.

The actual conduct of which the respondent complain and upon which this suit was founded was the *peaceful patroling of a single person in front of one of the respondent's stores on a single day.* This person acted on behalf of the petitioners and carried a placard exhibiting the legend, "DO YOUR PART! BUY WHERE YOU CAN WORK! NO NEGROES EMPLOYED HERE!" It is stated and admitted in the record that "the information conveyed by the placard borne as aforesaid was wholly true and was not intended and did not in fact coerce or intimidate customers of the respondent" and that none of the petitioners nor any picket or other person acting on behalf of any of the petitioners has physically hindered, obstructed, interfered with, delayed, or harassed persons desiring to enter the place of business of the respondent, or acted in a disorderly manner or caused or encouraged crowds to gather in front of said store. Throughout the period of picketing the situation was substantially that revealed by photographs which were exhibits to the respondents' bill and appear in the present record. (R., 12A, 12B).

It is also set out in the record that the petitioners were not party to any conspiracy (R., 15); that the acts complained of other than to make the aforesaid requests upon the respondent and in making such requests they acted solely as agents of petitioners, who were potential employees, consumers, and discharged employees (R. 14, 15); and that the petitioners have not requested the discharge of any present employees of the respondent but have merely asked that the respondent adopt a policy of giving employment to Negro clerks in the regular course of personnel changes.

Specification of Errors to be Urged.

I.

The court below erred in holding that as a matter of general Federal Law the acts of peaceful picketing and patrolling admitted on the record (R., 8, 12A, 12B) were unlawful.

II.

The court below erred in holding that that part of the injunction which prohibits the petitioners from inducing persons not to do business with the respondent did not violate the right of free speech guaranteed by the First Amendment of the Constitution of the United States.

III.

The court erred in holding that that part of the injunction which prohibited the petitioners from boycotting the respondent's business and compelling them to trade at respondent's store (R., 20), violated the Fifth Amendment of the Constitution of the United States.

IV.

The court erred in holding that the broad and inclusive language of the injunction prohibiting the petitioners from

negotiating, peacefully picketing and boycotting in any capacity (R., 20) did not nullify that portion of Section 13, paragraph C, of the Norris-LaGuardia Act.

V.

The court erred in holding that an association of Negroes organized for the purpose of securing better employment opportunities in business enterprises located in Negro residential and business districts and whose patronage is practically 100% Negro, did not have such "direct or indirect interest" in said business enterprises as to precipitate a labor dispute between the association and the management of said business enterprises within the purview of Sec. 13 (a) and (b) of the Norris-LaGuardia Labor Disputes Act, March 23, 1932 (47 Stat. 70).

VI.

The court erred in holding that such a controversy as described in the above paragraph was not a labor dispute within the contemplation of Section 13, paragraph c of the Norris-LaGuardia Act, which defines labor disputes as follows:

> "(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representations of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

VII.

The court erred in holding that the peaceful patrolling of a single person in front of one of respondent's stores, located in a Negro business district (see R., 12A) for the purpose of making known to the public the respondent's

refusal to negotiate with the petitioners "concerning the terms or conditions of employment, or concerning the association or representations of persons in negotiating, fixing, maintaining, changing, regardless of whether or not the disputants stand in the proximate relation of employer and employee," was not a labor dispute under Section 13 of the Norris-Laguardia Act, where the respondent had discontinued the services of persons represented by the petitioners and refused to give those persons or other persons of the particular group to which they belonged opportunity for employment in a newly opened establishment.

VIII.

The court erred in affirming the decree of the District Court of the United States for the District of Columbia in issuing the injunction.

The first, second, and third specifications of error will be discussed together and the fourth, fifth, and sixth and seventh will be discussed together.

IX.

The court erred in affirming the decree of the lower court.

Summary of Argument.

I.

The great weight of authority is that where the purpose of the boycott and/or picket is lawful, and they are prosecuted peacefully and orderly; where there is no actual or threatened violence, no unlawful assemblage, fraud, misrepresentation, unlawful conspiracy or intimidation, there is no ground for injunctive relief. The petitioners' conduct was in exact accord with this authority.

II.

The affirmative injunction (R. 20) issued below was error as a matter of established principles of equity and was a denial of the constitutional guaranty of personal liberty.

III.

The definitions of terms provided in the Norris-LaGuardia Act bring the case at bar within its ambit because (1) the petitioners were representing persons seeking employment in respondent's business and as such had a "direct or indirect interest" in the "occupation in which the dispute occurs"; (2) "relief is sought against" the petitioners; (3) the dispute is a "controversy concerning the association of persons negotiating * * * seeking to arrange terms or conditions of employment"; (4) they were concerned with a case which "involves conflicting interests in a labor dispute of persons participating or interested therein". To hold otherwise is to thwart plain Congressional intent, to nullify and frustrate liberal statutory construction and to disregard sound judicial doctrine.

IV.

The District of Columbia is divided into ninety-five tracts. The particular store which gave rise to the case at bar is located in tract forty-five, where there are 3,219 people, of whom 105 are white, 4 are members of other races, and 3,110 Negro. Thus the store's patronage is 96.6 per cent Negro.[1] Denied equal employment opportunities not only in a store supported by his patronage but by the whole community and nation because of conditions over which he has no control the Negro is compelled to use every lawful and peaceful method to gain a bare subsistance.

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[1] Bureau of Census, Department of Commerce. Population Census Tracts, D. C. 1935.

ARGUMENT.

I.

The record reveals no unlawful act of the petitioners upon which injunctive relief against picketing might be predicated.

It will hardly be disputed that to justify such relief as has been sought and granted in this case there must be both unlawful action by the petitioners and injury to the respondent. The mere fact of injury, actual or threatened, is not enough. That injury must result from acts which are themselves wrongful. "Peaceful picketing and honest persuasion in matters of economic and social rivalry is not prohibited. The employer, if threatened in his business life by violence or by other wrongful acts, might have the aid of the court to protect himself from damage threatened by recourse to unlawful means, but the right of workmen to organize to better their condition has been fully recognized. The fact that such action may result in incidental injury to the employer does not in itself constitute a justification for issuing an injunction against such acts. The interests of capital and labor are at times inimical and the courts may not decide controversies between the parties so long as neither resorts to violence, deceit or misrepresentation to bring about the desired result." *Stillwell Theater* v. *Kaplan*, 259 N. Y. 405, 182 N. E. 63, p. 65.

The gravamen of the present complaint is that the petitioners have threatened and intimidated customers, indulged in disorderly conduct, joined in an unlawful conspiracy and made false representations about the respondent and its business, all to the irreparable damage of the respondent. In brief, it is alleged that various torts and legal wrongs, have been committed by the petitioners and that a court of equity should enjoin these wrongs because

there is no adequate remedy at law. If the denials and allegations of the answer, the truth of which has been admitted upon the present record, show that no such wrongs have been committed, there is no proper basis for the injunction. As Mr. Justice Brandeis said in *Senn* v. *Tile Layers Union*, 301 U. S. 468 (1937), "One has no constitutional right to a remedy against the lawful conduct of another". The doctrine of *George B. Wallace* v. *International Auto Mechanics*, 63 P. (2d) 1090 (1936), a case involving a statute patterned after the Norris-LaGuardia Act, that no one has a vested right to the patronage of those who are not in accord with its employment and economic policies, is, in our view, sound.

a. The Record Shows no Actual or Threatened Interference with Respondent or its Customers by Petitioners Through Force, Threats, Disorderly Assemblage, Destruction of Property, Fraud or Misrepresentation.

The answer expressly denies all allegations of tortious conduct. Moreover, it is expressly alleged that the peaceful patrolling of a single person upon the public sidewalk in front of the respondent's store during the business hours of one day was the only conduct attributable to the petitioners or any of them. The exhibits to respondent's bill (R. 12A, 12B) are accurate pictorial representations of that conduct.

Although a few State courts have taken the position, erroneously it is submitted, that any picketing or patrolling is disorderly and threatening, the settled rule of the Federal courts is that the factual situation of each case determines whether disorder, intimidation or other unlawful conduct is involved in picketing. *Fenske* v. *Upholsterer's International Union*, 193 N. E. 112, 120, 121; *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184.

Quite apart from the Norris-LaGuardia Act the broad terms of the injunction in this case, virtually ordering the

petitioners to trade at the respondent's store (R. 20), violated the Constitutional guaranty of free speech and was contrary to the General Federal Law. Thus, in the *Tri-City* case, *supra*, this Honorable Court was careful to distinguish between peaceful persuasion, lawful procedure not subject to injunction and action of an intimidating or violent character. This Honorable Court further pointed out that a single picket might lawfully be stationed at each entrance of the establishment in question though a crowd or large number of pickets would be unlawful by reason of their tendency to intimidate. It was in this case that Mr. Chief Justice Taft pointed out that "persuasion and propaganda" without more is not enough for injunctive relief, and that "the purpose of injunction should be to prevent the inevitable intimidation of the presence of groups of pickets but to allow missionaries". The petitioners were in a very real sense missionaries, missionaries seeking public support in gaining some measure of relief from economic and social enslavement. The *Tri-City* case, *supra*, though often cited in support of injunctive relief, is express authority against the kind of blanket prohibition of picketing imposed upon the petitioners in the present case.

Similarly, in *Davis* v. *Henry*, 266 Fed. 261 (1920), the Circuit Court of Appeals for the 6th Circuit, in setting aside an injunction stated:

> "The order appealed from went too far in enjoining against 'interfering in any way—directly, or indirectly with the plaintiff—and from picketing highways, or means of ingress and egress to and from said plant of said buggy company'—acts which do not necessarily constitute an unlawful interference."

The court below previously had been careful to limit injunctions against interference with business to the restraining of acts of violence or the coercion or intimidation of customers.

American Federation of Labor v. *Buck's Stove and Range Co.*, 33 App. D. C. 85;
Bender v. *Local Union, No. 118*, W. L. R. 574.

It is to be emphasized that this question of whether or not the acts complained of are themselves tortious or otherwise illegal is not dependent upon the relation of the parties or the nature of the controversy. And the Federal doctrine is clear that the peaceful patrolling of a single person in front of a place of business so as to make a complaint against that business is not of itself a disorderly or intimidating act.

b. The Record Shows no Conspiracy Among the Petitioners.

The answer categorically denies that the petitioners have been party to any conspiracy (R. 14). And there are no undenied allegations of the bill upon which a finding of unlawful concert can be predicated. The individual petitioners were not connected in any way with the picketing. The answer shows that the petitioner corporation, and it alone, caused the picketing (R. 15), and that the petitioner's officers did no more than to write to the respondent requesting certain changes in employment policies. Quite apart from the legality of these ends, there is no showing whatever that the parties conspired with each other or with any other person or persons.

c. The Record Shows no Misrepresentation of Fact.

The record shows, and is not disputed, that the placard carried by the picket told the truth. Indeed, there is no allegation in the bill that the petitioners have made any misrepresentation of fact. It is alleged that the petitioners had threatened to make false representations that the re-

spondent did not employ colored persons (R. 3) but this allegation is denied (R. 14).

d. Cases Involving "Mass Picketing" and Other Intimidating Conduct are Distinguishable.

Illustrative of the distinction between the instant case and a case involving intimidation or otherwise unlawful conduct is *Green* v. *Samuelson*, 168 Md. 421. There, in a controversy somewhat similar to the one at bar the court ordered a modification of an injunction restraining all acts interfering with defendant's business, pointing out that the group of Negroes there asserting demands for employment should not be restrained from lawful acts of asserting, publicizing or seeking support for their demands, but merely from mass picketing and acts calculated to intimidate rather than persuade others.

The oral opinion of the trial court (R. 16, 18) relies upon *King* v. *Weiss & Lesh Mfg. Co.*, 266 Fed. 257, as authority for the issuance of the injunction in this case. But in the *King* case mass picketing had resulted in intimidation of employees and the trial court had so found. The Circuit Court of Appeals ruled that the question of intimidation was a question of fact upon which the evidence justified a finding that employees had been intimidated. In the present case the facts as set forth by both petitioner and respondent affirmatively show the absence of intimidation. Thus the *King* case, like the *Tri-City* case, *supra*, is a precedent for denying, rather than for granting an injunction in the instant case.

The trial court also relied upon *Beck* v. *Railway Teamsters' Protective Union*, 118 Mich. 497. Though this is a leading case in a jurisdiction far less liberal than the District of Columbia or the Federal jurisdictions generally in permitting picketing, it does not support the present in-

junction. There had been force and violence, and admittedly so, in the *Beck* case. There had been intimidation. Mass picketing had occurred. The rationale of the decision is that intimidation as well as physical violence may be restrained. There is no intimation that picketing would have been restrained in the absence of intimidation, although violence and intimidation were deemed justification for banning all the act responsible for such results. Thus, this case is not in conflict with the Federal doctrine of permitting peaceful persuasion through picketing or otherwise in the absence of violence or intimidation. A peaceful picket, free from violence, intimidation and misstatements about the proprietor's business is a perfectly lawful act and one not to be enjoined by any order of court.

The only tenable doctrine in cases involving no violence, threats, or intimidation has been thus expressed in a case involving picketing by consumers protesting the price of bread at the picketed bakery:

> "I conceive that it is clear in reason and principle that picketing not accompanied 'by violence, threats or intimidation, expressed or implied' and having a lawful purpose should not be enjoined. * * *
>
> "The right of an individual or group of individuals to protest in a peaceful manner against injustice or oppression, actual or fancied, is one to be cherished and not to be prescribed in any well-ordered society. It is an essential prerogative of free men living under democratic institutions. And it is salutary for the State in that it serves as a safety valve in times of stress and strain."
>
> *Julie Baking Co.* v. *Graymond*, 274 N. Y. Supp. 250.

To the same effect is a recent Missouri decision:

> "It is said, however, for the City that John Smith, a member of the public, has no right for his own private

> purposes, whatever they may be, to take his stand for a period of two hours every day upon a particular portion of the street * * *. That he has such a right there can, in our opinion, be no question, providing he conducts himself in a peaceful, orderly manner, disturbs no one, and commits no overt act. In this case, according to the testimony of the officer who made the arrest, he arrested the defendant for the purpose of preventing him from doing picket duty. * * * If these defendants are not permitted to tell the story of their wrongs, or, if you please, their supposed wrongs, by word of mouth or with pen and print, and to endeavor to persuade others to aid them by all peaceful means, in securing redress of such wrongs, what becomes of free speech, and what of personal liberty * * *."
>
> *City of St. Louis* v. *Gloner*, 210 Mo. 502.

It is submitted that upon the record the petitioners have done no unlawful act and that therefore the injunction against them was improvidently and erroneously issued.

II.

The court erred and infringed the petitioners' rights of free speech and personal liberty by restraining them from "boycotting" respondent's business and peacefully persuading others not to patronize that business.

The paragraph of the permanent injunction numbered "2" (R. 20) contains a general prohibition against "boycotting" respondent's business and paragraph "3" prohibits any "inducement" of persons not to do business with the respondent. This language prohibits the petitioners from refusing to trade with the respondent and prohibits them from peacefully persuading other persons to refrain from trading with the respondent. It is to be noted that the prohibitions are additional to and distinct from the prohibi-

tion against picketing. Judge Stephens very properly said in his dissenting opinion:

> "I dissent from the affirmance of that part of the decree which as worded enjoins the appellants from boycotting the appellee. I think it was erroneous for the trial court in effect to order the appellants to trade at the appellee's store" (R. 29).

In modifying a similarly inclusive injunction in *American Federation of Labor* v. *Buck Stove and Range Co., supra,* the court made the following statement which is as applicable to the present injunction as to the one then under consideration.

> "We have no power to compel the defendants to purchase complainants stoves; we have no power to prevent defendants, their servants and agents, from preventing others from purchasing from them" (at P. 110).

In the same way the court in *Bender* v. *Local Union, supra,* refused to restrain the defendants from their efforts to persuade others not to deal with the plaintiff and found that such acts, if peaceful and not intimidating, are not unlawful.

But the prohibition against refusal to trade with respondent or peacefully persuading others similarly to refuse is not only error as a matter of established principles of equity, it is also a denial of the Constitutional right of personal liberty. In the *City of St. Louis* v. *Gloner, supra,* the Missouri court held that even a denial of the right to picket peacefully "infringes upon the right of personal liberty, and is unreasonable and oppressive." Similarly, in *Segenfeld* v. *Friedman,* 193 N. Y. Supp. 128, the right of peaceful persuasion, whether through the device of picketing or other means of publication, is described as a Constitutional right. "I know of no sound principle of law which prohibits orderly picketing, or that which does not transgress on the rights of others. Indeed, a great body of law affirmatively

establishes the opposite proposition. The right to picket is founded on constitutional principles, and although it might appear that some recent adjudications in certain jurisdictions encroach upon this right, the constitutional guaranty still survives and must be respected and upheld" (at page 130). The right peacefully to picket is like the right of freedom of speech and freedom of thought and it cannot be denied for it is guaranteed by the First Amendment of the Constitution.

All courts, including the U. S. Supreme Court (*American Steel Foundries* v. *Tri-City and Central Trades Council*, 257 U. S. 184) sustain the right of peaceful picketing.

"The doctrine that picketing is necessarily a species of coercion and intimidation is dogma long since discarded. If merely peaceful picketing were in and of itself coercion, there could never be peaceful picketing for coercion is never lawful." The modern view is that picketing is not *per se* unlawful and should not be enjoined, if peaceably carried on for a lawful purpose." *Bayonne Textile Corporation* v. *American Federation of Silk Workers*, 116 N. J. 146, 172 A. 551. *George B. Wallace Co. et al.* v. *International Auto Mechanics* (*supra*).

In most cases where all picketing has been enjoined, some abuse of the right peacefully to picket has led the courts to say that the only way to stop such abuses is to prohibit the wrongdoers from picketing altogether. One isolated wrong or some abuse of the right to picket is no ground for a sweeping injunction against all picketing. The one outstanding fact in this case is that every necessary element upon which the right to picket is based is present, namely, an actual *bona-fide* dispute, a dispute involving the furtherance and betterment of the common interest of employees and consumers, and a peaceful picket for a lawful purpose. It is through concerted action and collective bargaining that the laborer hopes for some semblance of economic security.

Geo. B. Wallace Co. et al. v. *International Auto Mechanics Union* (*supra*).

"Freedom to conduct a business and freedom to engage in labor, each is like a property right. Threatened and unjustified interference with either will be prevented. But the basis of permissible action by the Court is the probability of such interference in the future, a conclusion only to be reached through proof contained in the record. Unless the need for protection appears, equity should decline jurisdiction." *Exchange Bakery and Restaurant, Inc.*, v. *Rifkin et al.*, 157 N. E. 130. The record in the present case does not contain the requisite proof.

Government of the relations between capital and labor by injunction is a solecism. It is an absurdity. Injunctions in labor disputes are the emergency brakes for rare use and in case of sudden danger. Cf. The Labor Injunction, Frankfurter & Greene.

III.

The court erred in holding that the controversy here is not comprehended by the Norris-LaGuardia Labor Disputes Act of March 23, 1932.

The preceding argument has been directed to the issues of general law presented by this case quite apart from any statutory restriction upon the jurisdiction of the court. It remains to consider the effect of the Act of March 23, 1932 (47 Stat. 70), which deprives courts of the District of Columbia of power to restrain peaceful picketing in cases involving "labor disputes" as defined in that Act and prescribes procedural prerequisites for the issuance of any injunction in a case involving a "labor dispute". It is not denied that the injunction was issued in this case without compliance with such requirements and that, if this case is

within the purview of the statute, the action of the trial court was improvident and in excess of its jurisdiction.

The introduction of the Norris-LaGuardia Labor Disputes Act, purporting to declare the public policy of the United States, recognizes that the individual, unorganized workman under prevailing economic conditions, is commonly in a position of unequal bargaining power unless he is guaranteed full freedom of association and negotiation with his employer. The Act was specifically intended to overcome the restricted constructions of the Clayton Act by the United States Supreme Court, particularly in the *Duplex* v. *Deering*, 54 U. S. 443, and the *American Steel Foundries* v. *Tri-City Cases* (*supra*). It was designed specifically to cover two situations, in addition to those which the Clayton Act aimed to cover, namely: (1) Where the controversy was other than those of hours, wages, and working conditions (*American Steel Foundries* v. *Tri-City* (*supra*); (2) where the dispute was between others than employer and employee (*Duplex* v. *Deering, supra*). The history of the frustration and nullification of the labor provisions of the Clayton Act, 38 Stat. 738 (1914), 29 U. S. C. 52, should insure the salvation of the Norris-LaGuardia Labor Disputes Act, 50 Harv. L. Rev. 1303.

The comprehensive provisions of the Act and the debates in Congress and the House and Senate reports clearly indicate that there was no doubt about the intention of Congress to have the courts protect the substantial, but less obvious, economic interest of the laboring man as well as the interest of the employer. To the argument in *Cinderella Theater* v. *Sign Writers' Local Union* (6 F. Supp.164, 1934), that no labor dispute could exist as the single employe involved in that case was content with existing terms and conditions of employment, the court said that both the express terms of the statute and the Congressional Com-

mittee reports made it clear that the agitating parties could be other than employees.

The report of the House Committee on Judiciary, favoring passage of the bill, reads as follows:

> "Sec. 13 (29 U. S. C. A. 113) contains definitions which speak for themselves. It is hardly necessary to discuss them other than to say that these definitions include, as hereinabove stated, a definition of a person participating in a labor dispute which is broad enough to include others than the immediate disputants and thereby corrects the law as announced in the *Duplex* v. *Deering* (*supra*), wherein the Supreme Court reversed the Circuit Court of Appeals and held that the inhibition of Sec. 20 of the Clayton Act (*supra*) only related to those occupying the position of employees or employer and no others."[2]

The language of the report of the Senate Committee on Judiciary, favorably reporting the bill, reads as follows:

> "Sec. 13 of the bill defines various terms used in the Act and it is not believed that any criticism has been or will be made of the definitions.
>
> "The main purpose of these definitions is to provide for limiting the injunctive powers of the Federal Courts only in the special types of cases, commonly called labor disputes, in which these powers have been notoriously extended beyond the mere exercise of civil authority and wherein the courts have been converted into policing agencies devoted in the guise of preserving peace, to the purpose of aiding employers to coerce employees into accepting terms and conditions of employment desired by employers.
>
> "The proposed bill is designed primarily as a practical means of remedying existing evils, and limitations are imposed upon the courts in that class of cases wherein these evils have grown up and become intolerable. This is a reasonable exercise of legislative

[2] House Report No. 669, 72d Congress, 1st Session.

power, and in order that the limitation may not be whittled away by refined definitions of what persons are to be regarded as legitimately involved in labor disputes, the bill undertakes specifically to designate those persons who are entitled to invoke the protections of the procedure required.[3]

The Act grants immunity to "interested persons who urge or induce others who are likewise interested and the only express limitations in the Act are the implied prohibitions of fraud or violence or threats of violence."

Section 13 of the Act describes the situations involving labor disputes to which the statute applies in the following language:

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interest therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers and associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupa-

[3] Senate Report 1060, 71st Cong., 2nd Sess. Senate Report 163, 72nd Cong., 1st Sess.

tion in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representations of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

"(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia (Mar. 23, 1932, c. 90, 13, 47, Stat. 73)."

Acting on behalf of the group thus discriminated against in employment, the petitioner Alliance is properly deemed to be engaged in a labor dispute within the meaning of the statute. Thus, the record shows that the case "involves conflicting interests in a labor dispute of persons participating or interested therein" as shown by the circumstances that "relief is sought against" the petitioners, that the petitioner Alliance represents persons seeking employment in respondent's business and as such representative has "direct or indirect interest" in the "occupation in which such dispute occurs", and that this dispute is a "controversy concerning the association of persons seeking to arrange terms or conditions of employment".

"The dissenting opinion of the lower court held that the dispute involved was 'in essence' a racial dispute and not a labor dispute. For a group of Jewish workmen to put pressure on a Jewish employer to replace his Italian tailors with Jewish ones would clearly be

a labor controversy, although racial also. The fact that a dispute is racial does not prevent its being a labor dispute as well. The opposite conclusion is more surprising in view of the court's statement that 'Appellants have admittedly confederated together to impose on appellee definite terms in the employment of its help' and in view of Judge Stephens' conclusion that it is a racial dispute concerning hiring, and has thus in a broad sense to do with the question of labor. * * * It is hard to reconcile such a view when the very definition of a labor dispute includes any controversy concerning terms and conditions of employment and especially when the controversy admittedly concerns terms and conditions of employment even though the employer is white and the persons for whom employment is sought are Negroes."[4] "It is not enough * * * to say that the defendant induced the public, or a part of them, not to deal with the plaintiff * * * in all such cases the ground of decision is policy; and the advantages to the community, on the one side and the other, are the only matters really entitled to be weighed."[5]

"The desirability of allowing peaceful picketing by labor unions although it injures the trade of the person picketed rests in part on the social advantage of improving the economic position of the union members, which in turn depends in large part on the economic need of working men and their consequent weakness in bargaining. These considerations apply with even greater force to picketing by Negroes. For the last forty years the wages of Negro men have averaged 15 to 50% less than those of white male wage-earners, while Negro women have received from 20 to 40% less, on the average, than white women.[6] 'Both male and female Negro wage-earners are given the heaviest, dirtiest, hottest, wettest, most poisonous, and disagreeable jobs which their skill permits them to fill. Discrimination in favor

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[4] 28 Cornell Law Quarterly (1937), p. 207.
[5] Holmes, Privilege, Malice and Intent (1894), 8 Harv. L. Rev. 1, 9.
[6] Dougherty, Labor Problems in American Industry (1936), p. 495.

of the white workers seems to be common in almost every industry.'[7] The great majority of Negroes are unskilled and employed in unorganized industries, and the racial prejudice of white union members has discouraged the entrance of colored people into established unions.[8] According to the study made in 1929 by the National Urban League, a Negro research group, only 1.5% of all Negroes gainfully employed were members of unions.[9] The high proportion of poverty, destitution, and dependency among Negroes is notorious. The economic advancement of Negroes is quite as clear a justification of picketing as the advancement of union men.

"Judge Stephens declared briefly that: 'Violence in racial disputes is, as a matter of common knowledge,' highly probable. Therefore, as a matter of public policy, picketing in such disputes cannot be justified, even though in its inception, as in the instant case, it is actually peaceful.' A few years ago, some judges took precisely this position with regard to picketing in labor disputes.[10] It is now generally recognized that those judges were mistaken in their assumptions of fact. It is doubtful whether Judge Stephens' assumption is better founded. The phrase 'racial dispute' is symbolic; it connotes violence because certain familiar types of racial disputes, in certain areas, are violent. It does not follow that all controversies everywhere, to which the same name can be applied, threaten violence. It is unfortunate that Judge Stephens demanded no evidence that the particular acts of the defendants, in the well-policed city of Washington, made violence likely. It is doubly unfortunate because the colored people whom the court restrained were more likely to be the victims than the perpetrators of any possible violence. There

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[7] *Id.*, at 341.

[8] *Id.*, at 495; see also International Juridical Association Monthly Bulletin (October, 1937), p. 46.

[9] Dougherty, Labor Problems in American Industry (1936), p. 495.

[10] See Taft, C. J., in *American Steel Foundries* v. *Tri-City Central Trades Council et al.*, 257 U. S. 184, 42 Sup. Ct. 72 (1921): "The name 'picket' indicated a militant purpose, inconsistent with peaceful persuasion."

> is always an element of irony when peaceful men are denied the privilege of speech lest violent men resent their exercise of it. Decisions like the present one tend to drive unprivileged minorities to more passionate manifestations of group dissatisfaction." [11]

The fact that none of the petitioners were employees of the respondent is immaterial. The courts have been clear in the few cases that have arisen under the Norris-LaGuardia Act that the statute protects so-called "outsiders" attempting to change employment policies even though present employees make no complaint.

American Furniture Co. v. *Chauffeurs, Teamsters and Helpers Local,* 268 N. W. 250, 228 Wis. 332 (1936);
Levering and Garrigues Co. v. *Morrin,* 71 F. (2d) 284;
Miller Parlor Furniture Co. v. *Furniture Workers,* 8 Fed. Supp. 209;
Cinderella Theater Co. v. *Sign Writers' Local Union,* 6 Fed. Supp. 164;
Dean v. *Mayo,* 8 Fed. Supp. 73 (1934):

Notwithstanding the fact that no dispute exists between employer and employee the status of a labor dispute may exist even though employees are unorganized and none belongs to an organization fostering the picket line. *American Furniture Co.* v. *Chauffeurs, Teamsters and Helpers Union* (*supra*); *George B. Wallace et al.* v. *International Association of Auto Mechanics et al.,* 63 P. 2d 1090; *Senn* v. *Tile Layers Union,* 301 U. S. 468 (1937). Recently the American Newspaper Guild picketed advertisers in a newspaper against which it was on strike; in that case the court denied an injunction since picketing and boycotting were within the definition of a labor dispute. In the New York Civil Practice Act [12] which covers any controversy arising out of

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[11] Schoenberg, 23 Cornell Law Quarterly (1937), p. 208.
[12] N. Y. Civ. Prac. Act, 876A, subd. 10 (c).

the respective interests of employer and employee, regardless of whether or not the disputants stand in the relation of employer and employee,[13] this liberal construction of the Norris-LaGuardia Act has been applauded by many commentators.[14] It has been judicially determined that the application of the phrase, "terms or conditions of employment" extends to disputes concerning persons to be employed and policies concerning hiring.

The petitioners' purpose was identical with the purpose of the picket in the *Senn* case (*supra*), namely, "to acquaint the public with the facts, and gain its support," and by so much to induce the public to assist the petitioners in gaining the desired economic end. In that recently decided case this Court said:

> "If the end sought by the union is not forbidden by the Federal Constitution the state may authorize working men to seek to attain it by combining as pickets, just as it permits capitalists and employers to combine in other ways to attain their desired economic ends.
>
> "Because his action was harmful, the fact that none of Senn's employees was a union member, or sought the union's aid, is immaterial.
>
> "Each member of a union as well as Senn has a right to strive to earn his living. Senn seeks to do so through exercise of his individual skill and planning. Union members seek to do so through combination. Earning a living is dependent upon securing work; and securing work is dependent upon public favor. To win the patronage of the public each may strive by legal means."

Disclosures to the public of annoying facts is not an invasion of liberty granted by the Constitution. *Pa. Railroad Co.* v. *U. S. Railroad Labor Board*, 261 U. S. 72.

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[13] New York Times, Wednesday, Oct. 20, 1937, p. 2.

[14] Notes (1936) 85 U. of Pa. L. Rev. 224, (1936) 84 U. of Pa. L. Rev. 10-27-29, (1937) 50 Harv. L. Rev. 1295.

Thus, the subject matter of controversy had all the elements of a labor dispute—discharge of old employees, refusal to hire new employees out of a certain group, refusal to bargain concerning employment policies and "concerning terms or conditions of employment, the association or representations of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment". The fact that the petitioners acted on behalf of discharged and prospective employees is not disputed. The only element of dissimilarity between this case and other cases which are admittedly labor disputes is the fact that the instrumentality and active agency here is organized for more effective struggle on a broader base than is the traditional labor union. Here, the consumers who support the business and the workers who seek employment are joined in a single organization. And although, as concerns the business of the appellee, the complaining organization is composed of consumers and workers, as concerns the economic discrimination suffered by the racial group to which all belong, the petitioners all stand as workers struggling against a particular manifestation of a policy of economic discrimination which is of vital concern to all. The strange and regrettable aspect of the opinion of the court below is its failure to consider either the plain Congressional intent, the concise, unequivocal meaning of the phrase defining "labor dispute" in the Norris-LaGuardia Act, "regardless of whether or not disputants stand in the proximate relation of employer and employee" or the judicial doctrine of this Court and others that if a union "believes in good faith that the policy pursued" by an employer is "hostile to the interests of organized labor and is likely, if not suppressed to lower the standards of living for workers, it has the privilege by the pressure of notoriety and persuasion to bring its own policy to triumph". (Cardozo, C. J. in *Nann* v. *Raimist*, 255 N. Y. 307; *Ameri-*

can Steel Founderies v. *Tri-City Trades Council, supra,* 209; *Senn* v. *Tile Layers Protective Union, supra.*)

IV.

The petitioners are workers, necessarily organized on a broader base and for a more effective struggle against a discriminatory economic and employment policy.

This case involves not onyl legal questions but complex socio-economic principles which command the critical attention of all who believe that the law is really sovereign when it ripens into social justice. "An avalanche of decisions by tribunals great and small is producing a situation where citation of precedent is tending to count for less, and appeal to an informing principle is tending to count for more."[15]

In the fierce conflict and "free struggle for life"[16] the chief concern of courts should be to equalize those economic weapons at the command of both parties in the struggle and if the law interferes at all with the operation of the "natural" economic forces, its purpose should be to prevent one side from having too great an advantage over the other. "Courts cannot maintain a balance of power in economic conflict in the abstract".[17] Economic and social conditions over which the protagonists have no control, often render difficult the problem of equalizing the weapons used in the contest. Courts should base their decision upon the facts of each case and upon a consideration of the great variety of factors and their influence in the struggle for economic and social justice. All too often, "the victim is offered up to the gods of jurisprudence on the altar of regularity".[18] Comparative study of the size, strength,

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[15] Cardozo, The Growth of the Law, p. 5.
[16] Holmes in *Vegelhan v. Guster* 167 Mass. 92.
[17] Sayre—39 Yale L. J. 682, 696-97.
[18] Cardozo, The Growth of the Law, p. 66.

financial resources, history, purpose, influence, and skill of each contestant is essential. Difference within the economic and social areas should be considered and decisions reached based upon these subtle, yet powerful considerations.

The use of such language as "threats, conspiracy, intimidation", to describe ordinary economic pressure led the lower Court to believe that the respondent was a passive party whose only role was as a target of injurious activity and to look with disfavor upon the cause before it was pleaded. But the respondent discharged some people represented by petitioners, had refused to negotiate with petitioners concerning employment and had refused to recognize petitioners as representing and bargaining for employees and consumers who had a substantial economic interest at stake. And so both parties to the dispute were damaged. More is involved than mere injury to the respondent. Each side was trying to gain advantage in the contest at the expense of the other, if necessary. When the court enjoined the petitioners from peaceful picketing, it did more than prevent temporary damage to respondent; it gave him greater and unfair advantage over the petitioners before the petitioners could utilize the weapons at their disposal.

> "In dealing with these lively issues, sterility and unconscious partisanship readily assume the subtle guise of legal principles." *c. f.* Frankfurter & Greene, The Labor Injunction, p. 46.

It is generally conceded, even by the most casual observers of social-economic problems in this country, that the Negro group, being the marginal class in the economic life of the nation, has been the hardest hit during the period of stress and strain through which we have lately and are still passing. It is equally generally agreed that the present economic plight of the Negro is an integral part of the general social and economic structure of this country.

The Negro and Relief.[19]

In the District of Columbia approximately 75% of the total Negro population is on relief, yet the Negro represents only 27.1% of the total population.

The disproportionately large number of Negroes on relief rolls, the peculiarities inherent in the Negro's socio-economic status, and the prevalence of traditional beliefs in certain sections concerning procedure in the relative treatment of the races are among the factors which have attracted special consideration to the problem of the Negro on relief. While Negroes comprise only one-tenth of the total population of the United States, they have comprised an average of approximately one-sixth of the relief population. (See table B-1.)

Table B-1.—Per Cent of Negroes, Whites, and Other Races of the Total Population and of the Total Relief Population.

	Per cent of total United States population [21]	Per cent of relief population [20]
Negro	9.7	16.7
White	88.7	81.3
Others	1.6	2.0

The extremely disproportionate representation of Negroes on relief may be stated in another way. According to the Unemployment Relief Census of October 1933, Negroes on relief comprised 17.8 per cent of the total Negro population, whereas only 9.5 per cent of all white persons and other races were on relief. (See table B-2.)

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[19] 1930 Census of Population.

[20] Unemployment Relief Census, October 1933, Federal Emergency Relief Administration.

[21] Smith, Alfred E., Federal Emergency Relief Administration Bulletin, March 31, 1936.

By January 1935, according to estimates based on sample surveys, 25.5 per cent of all Negroes were on relief as compared to 15.5 per cent for all whites and other races. (See table B-3.) This disproportionate representation is more pronounced in the case of urban Negroes. According to the Unemployment Relief Census of October 1933 the percentage of the urban Negro population receiving relief was almost three times that of the urban white population.

TABLE B-2.—Number and Per Cent of Negroes, Whites, and Other Races on Relief, Urban and Rural.

October, 1933.

	Total population [22]	Relief population [23]	Per cent relief of total
Negro:			
Urban	5,193,913	1,387,313	26.7
Rural	6,697,230	730,331	10.9
Total	11,891,143	2,117,644	17.8
White and other races:			
Urban	63,760,910	6,196,852	9.7
Rural	47,122,993	4,371,168	9.3
Total	110,883,903	10,568,020	9.5
All races:			
Urban	68,954,823	7,584,165	11.0
Rural	53,820,223	5,101,499	9.5
Total	122,775,046	12,685,664	10.3

[22] 1930 Census of Population.

[23] Unemployment Relief Census, October 1933, Federal Emergency Relief Administration.

TABLE B-3.—Number and Per Cent of Negroes, Whites, and Other Races on Relief, Urban and Rural.

January, 1935.

	Total population [24]	Relief population [25]	Per cent relief of total
Negro:			
Urban	5,193,913	2,050,000	39.5
Rural	6,697,230	980,000	14.6
Total	11,891,143	3,030,000	25.5
White and other races:			
Urban	63,760,910	9,320,000	14.6
Rural	47,122,993	7,820,000	16.6
Total	110,883,903	17,140,000	15.5
All races:			
Urban	68,954,823	11,370,000	16.5
Rural	53,820,223	8,800,000	16.4
Total	122,775,046	20,170,000	16.4

[24] 1930 Census of Population.
[25] Unemployment Relief Census, October 1933, Federal Emergency Relief Administration.

The presence of Negroes on relief rolls in disproportionate numbers may be accounted for by a number of fairly well-known factors. The Negro has been forced to seek aid from relief agencies because of all the reasons which affect white persons plus a number which affect the Negro only. In general, the Negro's economic position is so insecure that he has been one of the worst victims of the depression. He has been forced on relief rolls by traditional

factors directed against him because of his race. More specifically, the following factors may be listed as among those responsible for the Negro's presence on relief rolls in numbers so much larger than might have been expected, in view of his percentage of the population:

1. The concentration of Negroes in those economic groups which have contributed heavily to the relief rolls; *i. e.*, unskilled labor and domestic service workers. For instance, 28.6 per cent of all Negroes gainfully employed are engaged in domestic service. A preponderant number of the 18.6 per cent engaged in manufacturing and mechanical industries are unskilled laborers.

2. Lower wage scales for Negroes than whites. Wages paid to Negro gainful workers are in most instances smaller than those paid to white workers doing identical work. The differential wage is less widespread in the North than in the South, although it exists in all sections.

3. Racial discrimination in lay-offs and reemployment. The Negro worker is traditionally the first to be discharged and the last to be rehired.

4. The displacement of Negro labor. The Negro gainful worker is being displaced by white workers and workers of other races. He is being crowded out of traditionally "Negro jobs," and occupational shifts brought about by the depression are crowding him out of the cheap labor field.

5. Industrial color bans. There have always been industries which have refused to employ Negro workers.

6. Color bans among organized labor. The Negro is frequently denied membership in labor unions. This discrimination has severely restricted his opportunities for employment, particularly under that part of the recovery program which gives preference to organized labor.

7. Small scale Negro business enterprises. Negro business enterprises are small in scale and number, confined to a narrow field, and handicapped by all the factors that diminish economic opportunity for the Negro.

8. The dislocation of the tenant system in southern agriculture. The impact of the depression on the "furnishing" system left many Negro tenants, sharecroppers, and laborers without even the bare necessities of living.

9. Lack of provision for Negro unemployables. The inadequacy of local public welfare facilities for Negroes is much more pronounced than for whites. Many communities with large Negro populations are almost, if not entirely, lacking in provisions for Negro unemployables. There is also a higher proportionate number of unemployables among Negroes because of such factors as inadequate income with the consequent ill health, high death rate, broken families, etc. According to the Unemployment Relief Census of October 1933, 20.5 per cent of all Negroes on relief in certain States with large Negro populations were 65 years of age or over as compared to only 6.3 per cent for whites in those States.

10. The relative instability of Negro family life. Broken families are a consequence of poor living conditions, migration, and kindred factors. Illegitimacy, illiteracy, and the lack of a sense of responsibility all have their roots in the Negro's unfortunate past, but are fostered by the conditions under which most Negroes are forced to live today.

Several of the above factors probably explain why Negroes on relief are not being reabsorbed into private industry at the same rate as whites. A special study of relief rolls in six selected cities revealed that while Negroes were added to the relief rolls in a proportion twice as great as whites through loss of private employment, they were re-

moved from the rolls through reemployment only half as frequently.[26]

In some rural areas Negro families were expected to live on considerably less than white families, as indicated by relief budgets. A study of certain rural counties in problem areas of the South, made by the Federal Emergency Relief Administration, revealed an average monthly relief budget of $8.31 for Negro families and $12.65 for white families.[27] A later study of rural Negroes on relief pointed out discrepancies between Negroes and whites both in direct and work relief benefits, but cited differences in the sizes of Negro and white households and differences in the occupational status and experience of employable members as some justification for such discrepancies.

The Negro white-collar worker is said to have suffered more proportionately from discriminatory practices than any other group. The existence of this group was frequently ignored and its members became "laborers" or remained ineligible for relief.

Negroes as a group are definitely anxious to support themselves without public aid, as disclosed by formal and informal investigations of the morale of relief persons. In Tift County, Georgia, for instance, the judgment of the local administrator was that, although the large Negro farm population had been subject to some "dumping" on the relief rolls by landlords during noncrop seasons and had become habituated through a lifetime of sharecropping and tenant farming to receiving aid in times of stress, Negroes were to the extent of 95 per cent of their number anxious to secure work and to become selfsupporting. All investigations which have been made indicate that there is no reason

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[26] Federal Emergency Relief Administration Research Bulletin, B-41.

[27] Computed from data contained in Federal Emergency Relief Administration Research Bulletins, E-3, p. 7, 10, 11, 13, 15, 17, 21, 24, 27, 28, 29, 31.

to believe the Negro will become chronically dependent on relief unless he is denied reasonable economic opportunity.

It has become axiomatic that the Negro is the first to be fired and the last to be hired. Denied employment opportunities in many avenues open alike to other citizens and non-citizens, as a matter of selfpreservation, the Negro has been forced to adopt a technique to obtain from those concerns which live by Negro patronage recognition in employment, to which, under all the circumstances, he is justly entitled. He has a right to attempt to win economic stability by peaceful, lawful means.

Since the Negro does not sit on the boards of directors of corporations, whose enterprises, conducted in Negro communities, help to swell the profits of those corporations, the Negro has been compelled to inaugurate campaigns such as the one complained of in this suit, to *persuade* the management by negotiations and/or peaceful picketing to give recognition in employment in those concerns which depend for their existence on Negro patronage. To deny the Negro this right is to take from him his only defense against a discriminatory policy which jeopardizes his economic security and dooms him forever to accept the crumbs from the table which his patronage has prepared.

Just as it is the concern of the community in general to see to it that the health standards of all groups are raised to, and maintained at, a level of safety, so it is the concern of the community that all groups have at least a semblance of economic security. The wealthy inhabitants of Sixteenth Street and Chevy Chase should be as interested in the health standards of poor unfortunate Negroes living in Bland Court and York Alley as in the health standards of their own immediate communities. This is evident when we realize that the persons who handle their foods before it

reaches their homes, the cooks who prepare their meals, the nurses who care for their babies, and those who are the caretakers of public and private buildings may come from a diseased-infected court, alley, or community. *In like manner, if Negroes are denied employment, they become a public charge, swell relief rolls, increase the prison population, and even endanger the personal safety of all citizens, the costs in all instances being borne from the purses of citizens apparently far removed from it all. To deny the Negro the right to work for an honest living is tantamount to denying him the right to live.*

In recent years there has been a steady drive to increase and to better conditions of employment. There has been developing what is referred to as a larger pattern of social justice. During this time peaceful picketing and the boycott have been universally used to improve conditions of employment. These devices have been used also to force employers to recognize particular unions and their right to organize within the ranks of employees even before the relationship of employer and employee had actually been established. Or, expressed in other language, unions composed of non-employees have used the device of picketing industrial establishments to force the management in said establishments into unions. Also, unions, frequently picket establishments which refuse to give employment to persons who are affiliated with unions. *There appears to be no difference between these situations and the dispute involved in this case other than in this case those seeking to arrange conditions of employment happened to be identified as members of the Negro race. In the equation of justice there is no element of race.*

THE OCCUPATIONAL AND EMPLOYMENT STATUS OF THE NEGRO.

But the Negro is denied economic opportunities. He is denied it in the Federal service. Senator Borah summed

up the discriminatory employment policy of the Federal Government when on January 7, 1938, in the United States Senate, he said, "Take for instance, the colored girl, who, under great handicaps, has earned the right to be employed by her Government upon an equality with everyone else. She goes with a certificate of competency from the Civil Service Commission, one of the great Departments here in Washington, under the ægis of the Federal Government, and when she enters the door and her color is discovered, she is told that the place is filled, which is probably false. This happens not once, but many times. She suffers injustice at the hands of her Federal Government."[28]

The same injustice and discriminatory employment policy is found in the local District Government, as for example: There are 1,340 white police officers in the District of Columbia, earning a yearly salary of $3,192,991; there are only 39 colored police officers, earning $103,280. Yet the Negro represents 27.1 per cent of the total population of the District of Columbia, and based on his ratio to the total population he is entitled to 373 police officers, who would earn $893,289. He has only 2.8 per cent of the number of police officers while the whites have 97.2 per cent of police officers.

In the Fire Department of the District of Columbia there are 871 white firemen and 17 colored firemen, when there should be 240 colored firemen based on percentage of population. These 871 white firemen earn $2,149,640; the 17 colored firemen earn $40,760, thus again the Negro while representing 27.1 per cent of the total population, has only 1.9 per cent employment in the Fire Department; while the white have 98.1.[29]

Of all Negro workers in the United States, 36.1 are in

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[28] Congressional Record, January 7, 1938, Vol. 83, p. 190.

[29] Bulletin Interracial Committee, District of Columbia, "No Negro Need Apply". Harlan E. Glazier and Charles Edward Russell.

agriculture, most of them southern farm laborers or tenants or share-croppers. In the ten chief cotton States, three million Negroes are dependent upon tenant farms. Among 2,000 such families in four States, the small number who received any cash money at all at the end of the year, averaged about $105, for the year 1934. When distributed among the average family of five, this represents a total monthly income per person of $1.75. Between 1920 and 1930, Negroes lost almost three million acres of land they once owned, an area equal to twice the size of the State of Delaware. Of all Negro workers, another 26.6% are in domestic service, generally working long hours for little pay. Negro skilled and semi-skilled workers, comprising another 18% are at the mercy of the trade unions, often barred from membership and forced to "scab" in order to work.

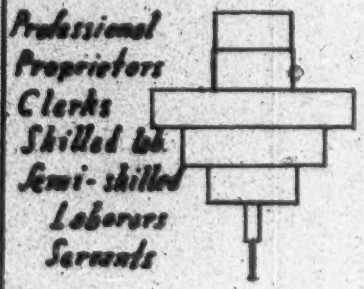
The resultant high percentage of unemployment and irregular work at low wages results in intense economic insecurity, the natural corrollaries of which are: too much labor by Negro women and children, poor homes and broken families, ill health, questionable recreation, delinquency and crime. The Great Depression of 1929 and subsequent years served to make this bad position even worse. While the Negro comprises less than one-tenth of the total population he has made up approximately one-sixth of the relief population. According to the Unemployment Relief Census of October, 1933, Negroes on relief comprised 17.8% of the total Negro population, whereas only 9.5% of all white persons and other races were on relief. All signs now indicate that, while he was "laid off" at twice the rate of other groups, the Negro is being reemployed at only one-half the rate.

"Table A-1"

GAINFUL WORKERS IN D.C., CLASSIFIED BY RACE, SEX AND SOCIAL-ECONOMIC GROUPS: 1930

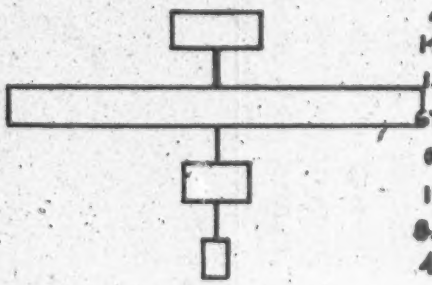
NATIVE WHITE

Male



	%
Professional	12.5
Proprietors	12.6
Clerks	32.2
Skilled lab.	23.5
Semi-skilled	14.5
Laborers	3.4
Servants	1.3

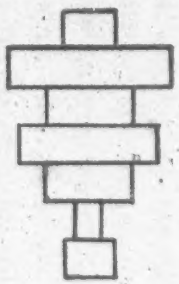
Female



	%
	14.8
	1.8
	57.1
	0.6
	11.4
	8.2
	4.0

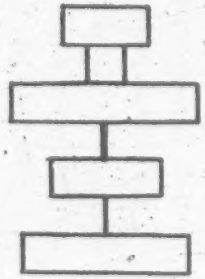
FOREIGN-BORN WHITE

Male



	%
	8.7
	25.9
	15.2
	22.7
	19.6
	4.2
	3.8

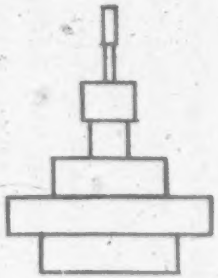
Female



	%
	14.1
	6.2
	31.9
	2.3
	18.8
	0.7
	27.0

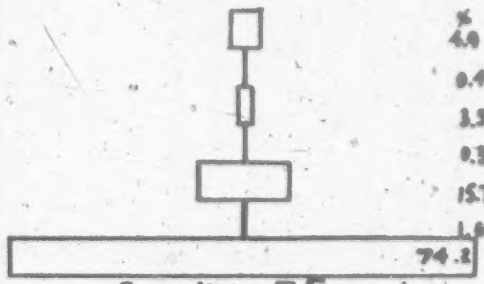
NEGRO

Male



	%
	3.8
	2.6
	2.8
	2.4
	18.0
	36.5
	33.1

Female



	%
	4.0
	0.4
	3.5
	0.3
	15.7
	1.9
	74.2

Franklin E. Frazier

Occupational Census of the Negro in the District of Columbia.

The diagram on the insert page (see table A-1)[30] shows the percentage of males and females in the working population of the native white, the foreign-born white, and the Negro group employed in the seven designated social-economic groups. The diagram shows in a very vivid manner the difference between the distribution for the three racial groups. For example, there are very few native whites employed as laborers and servants. The same is true of the foreign-born whites to a less extent. However, females among foreign-born whites have a comparatively large number in the servant class. In the Negro group, the majority of the workers are laborers and servants. In fact, for the females, practically three-fourths of them are servants. Employment policies undoubtedly help to keep the masses of Negro workers in the lower occupational groups.

Unemployment is rooted in the complexity, irregularity, and interdependence of our economic enterprise. The increasing burden of unemployment is due to the periodic disruption of the sensitive and intricate structure of modern economic life. When our economic and industrial structure moved slowly and simply, production supplied the few and measurable needs of the group directly, but in the terrifically prolific economy of today producers and consumers are strangers and productive enterprise is concerned with profits more than with the imperative and regular needs of the consumer and worker. This fact, coupled with the technological, geographic, and cyclical changes affecting the business structure and constantly upsetting the stability of our economy, compound in their periodic and devastating impact on producers, consumers and workers, particularly

[30] Franklin E. Frazier, Department of Sociology, Howard University.

the marginal, unorganized worker like the Negro who pays heaviest in poverty, squalor, suffering, discrimination, and injustice for what is called economic progress.

Careful estimates and analyses of competent statisticians, the results of whose studies (*supra*) are a part of this brief, reveal that approximately 80 per cent of all Negroes are employed as agricultural workers, domestics, and unskilled workers. These classes of workers are not included in social security or unemployment compensation benefits.

With the recurring maladjustments and tensions which characterize our business structure and the consequent hazards of instability and insecurity, with the exclusion from the benefits of State and Federal legislation and with the discrimination against the Negro by Local and Federal Governments and by the capitalists and corporations who control enterprises situated in Negro communities and supported by Negoes, how can the Negro survive the "dog eat dog" economic philosophy of our commercial and industrial economy? How can the Negro live but by the proper organization and the most effective utilization of his limited purchasing power?

Conclusion.

The decree below should be reversed.

Respectfully submitted,

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